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Bank & Trust Company*

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re

OCEANSIDE MILE LLC,
d/b/a Seabonay Beach Resort,

Debtor.

Case No. 02:13-bk-35286-BR

Chapter 11

**LIMITED OBJECTION TO DEBTOR AND
DEBTOR IN POSSESSION'S MOTION TO
DISMISS BANKRUPTCY CASE**

Date: January 13, 2015

Time: 10:00 a.m.

Place: Courtroom 1668
255 East Temple Street
Los Angeles, CA 90012

1 First-Citizens Bank & Trust Company (“**First-Citizens**”), secured lender to
2 Oceanside Mile LLC (the “**Debtor**”) hereby files this *Limited Objection to Debtor and Debtor in*
3 *Possession’s Motion to Dismiss Bankruptcy Case* (the “**Limited Objection**”). In support of the
4 Limited Objection, First-Citizens respectfully represents:

5 **BACKGROUND**

6 On March 6, 2014, the Debtor, the Mayo Group, and First-Citizens entered into
7 that certain Settlement and Release Agreement (the “**Settlement Agreement**”). The Settlement
8 Agreement was subsequently approved by this Court. *See Order Granting Motion to Approve:*
9 *(1) Settlement Agreement Between the Debtor and First Citizens Bank & Trust Company*
10 *Pursuant to F.R.B.P. 9019 and (2) Procedures for Sale of Seabonay Beach Resort [D.I. 144]* (the
11 “**Sale Order**”). The Settlement Agreement allowed the Debtor until October 31, 2014 to sell or
12 refinance the Seabonay Beach Resort (the “**Hotel**”) at a price sufficient to satisfy First-Citizens’
13 allowed secured claim (the “**Allowed Claim**”) *plus* all unpaid interest accrued on the Allowed
14 Claim *plus* \$325,000 (the “**Minimum Amount**”). Settlement Agreement § 10. Upon the closing
15 of a Permitted Refinancing or Permitted Sale, as such terms are defined in the Settlement
16 Agreement, the Debtor agreed to escrow \$325,000 for the reimbursement of First-Citizens’
17 attorneys’ fees and costs. Settlement Agreement § 10.3. Section 10.3 of the Settlement
18 Agreement entitles First Citizens to file an application with the Bankruptcy Court seeking
19 reimbursement for its reasonable legal fees and costs pursuant to section 506(b) of the
20 Bankruptcy Code within thirty days of the notice of the deposit of such funds. *Id.* If an
21 application is filed, the amount of legal fees and costs to be allowed pursuant to such application
22 is to be determined by the Court. *Id.* If the amount of fees awarded by the Court is less than
23 \$325,000, the excess funds located in the escrow are returned to the Debtor. *Id.*

24 On or about October 30, 2014, the Debtor consummated a Permitted Refinancing.
25 On October 31, 2013, the Debtor filed a Notice of Withdrawal of Sale [D.I. 178] informing the
26

1 Court that it had satisfied the conditions of the Sale Order and the Settlement Agreement
2 regarding the repayment of the Loan. On October 28, 2014, pursuant to Section 10.3 of the
3 Settlement Agreement, the Debtor notified White & Case LLP (“**W&C**”) that it had deposited
4 \$325,000 in an escrow account maintained by the Debtor’s counsel.

5 On November 26, 2014, First-Citizens timely filed its *Application to Determine*
6 *Attorneys’ Fees Pursuant to Section 506(b) of the Bankruptcy Code* [D.I. 186] (the “**Fee**
7 **Application**”). By the Fee Application, First-Citizens requested that the Court determine that the
8 full amount of First-Citizens’ attorneys’ fees are reasonable and allowed under section 506(b) of
9 the Bankruptcy Code. Although First-Citizens’ fees and expenses totaled \$484,637.01, First
10 Citizens reimbursement of legal fees and costs is capped at \$325,000 (the escrowed amount)
11 pursuant to the terms of the Settlement Agreement. The Fee Application is set to be heard by this
12 Court on January 13, 2015. The objection deadline is December 30, 2014.

14 On December 15, 2014, the Debtor filed its Motion to Dismiss [D.I. 191] (the
15 “**Motion to Dismiss**”). By the Motion to Dismiss, the Debtor requested that this Court enter an
16 order dismissing the above-captioned chapter 11 case (the “**Chapter 11 Case**”). The Motion to
17 Dismiss is also set to be heard on January 13, 2015.

19 **LIMITED OBJECTION**

20 First-Citizens objects to the Motion to Dismiss on a limited basis. While First-Citizens
21 does not object to the general concept of dismissal, no dismissal is proper until a final order has
22 been entered resolving the Fee Application and First-Citizens has been reimbursed for its allowed
23 fees and costs pursuant to the terms of such order. If the case is dismissed prior to such time, this
24 Court will have no jurisdiction to enforce the Settlement Agreement and its terms relating to legal
25 fees and costs, and there is no other forum where First-Citizens’ entitlement to legal fees can be
26 properly and efficiently adjudicated. The Debtor’s counsel has indicated that it intends to file an
27 objection to the Fee Application. If such an objection is filed, the Court should resolve such
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objection and First-Citizens should be paid its legal fees prior to this Court dismissing the case.

CONCLUSION

For the foregoing reasons, First-Citizens respectfully requests that the Court delay any dismissal of the Chapter 11 Case until the Fee Application has been resolved and First-Citizens has received whatever legal fees are allowed in connection therewith.

DATED: December 29, 2014

WHITE & CASE LLP

By: /s/ Roberto J. Kampfner

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*Attorneys for First-Citizens
Bank & Trust Company*

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

White & Case LLP
633 West Fifth Street, Suite 1900
Los Angeles, CA 90071

A true and correct copy of the foregoing document entitled:

LIMITED OBJECTION TO DEBTOR AND DEBTOR IN POSSESSION'S MOTION TO DISMISS BANKRUPTCY CASE

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On November 4, 2013, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

<u>COUNSEL TO THE DEBTOR:</u>	Sandford Frey (Sfrey@cmkllp.com)
<u>COUNSEL TO THE DEBTOR:</u>	Stuart I Koenig (Skoenig@cmkllp.com)
<u>COUNSEL TO THE DEBTOR:</u>	Marta C Wade (mwade@cmkllp.com, knielsen@cmkllp.com)
<u>COUNSEL TO THE U.S. TRUSTEE:</u>	Ron Maroko (ron.maroko@usdoj.gov)
<u>UNITED STATES TRUSTEE (L.A.):</u>	U.S. Trustee (ustpregion16.la.ecf@usdoj.gov)

2. **SERVED BY UNITED STATES MAIL:** On December 29, 2014, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

See attached.

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION, OR EMAIL:** [State method for each person or entity served.] Pursuant to Fed. R. Civ. P. 5 and/or controlling LBR, on November 4, 2013, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. (Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.)

Honorable Barry Russell
United States Bankruptcy Court
Central District of California
255 E. Temple Street, 14th Floor
Suite Number 1660
Los Angeles, CA 90012

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

December 29, 2014
Date

Young-Hee Bain
Printed Name

/s/ Young-Hee Bain
Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

To be served by First Class U.S. Mail:

	Oceanside Mile LLC d/b/a Seabonay Beach Resort 1546 E 14th Street Los Angeles, CA 90021	Kodsi Law Firm PA Paul D Gottfried Esq 1855 Griffin Rd Suite A-370 Dania Beach, FL 33004
Waste Services of Florida, Inc. 3101 NW 16th Terrace Pompano Beach, FL 33064	Travel Media Group PO Box 3828 Norfolk, VA 23514-3828	Broward County Code Enforcement 1 North University Dr Box 302 Plantation, FL 33324
Hospitality Staffing Solutions 100 Glenridge Point Parkway Ste 400 Atlanta, GA 30342	AFS1 LLC 4818 Satsuma Ave North Hollywood, CA 91601	Dry Masters Specialist LLC 2838 N State Rd 7 Hollywood, FL 33021
CCTVGUY INC Boaz Vaknin 5363 SW 33rd Ave Fort Lauderdale, FL 33312	Broward County Board of Comm's Commissioner 115 S Andrews Ave Room 119A Fort Lauderdale, FL 33301	Art Connection Ofer Sadik 2860 Center Port Cir Pompano Beach, FL 33064
Internal Revenue Service PO Box 7346 Philadelphia, PA 19101-7346	David Neblett 250 S Bayshore Dr. Ste 11 Miami, FL 33133	Kaufman Rossin & Co 2699 S Bayshore Dr Miami, FL 33133
AMC Liquidators 3705 W Commercial Blvd Fort Lauderdale, FL 33309	Franchise Tax Board Attn Bankruptcy PO Box 2952 Sacramento, CA 95812-2952	Moffa Gainor & Sutton PA 100 SE Third Ave Fort Lauderdale, FL 33394
Ofer Manor Laundry Service 1083 NW 124th Terrace Sunrise, FL 33323	IRS Ogden, UT 84201-0039	Zevuloni & Associates 10130 NW 47th St Sunrise, FL 33351
Town of Hillsboro Beach 1210 Hillsboro Mile Hillsboro Beach, FL 33062	Mayo Group 517 N Foothill Rd Beverly Hills, CA 90210	Amerigas 299 SW 12 Ave Pompano Beach, FL 33069-3228
Securities Exchange Commission 5670 Wilshire Blvd 11th Fl Los Angeles, CA 90036	Florida Power and Light FPL General Mail Facility Miami, FL 33188-0001	AllStat Elevator 5309 West Broward Blvd, Ste 115 Plantation, FL 33317
US Foods PO Box 281838 Atlanta, GA 30384	Expedia, Inc. Headquarters 333 108th Ave NE Bellevue, WA 98004	

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.